



POLICE DEPARTMENT

January 13, 2009

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Anthony Beaton
Tax Registry No. 927908
10 Precinct
Disciplinary Case No. 82201/06

The above-named member of the Department appeared before me on September 10 and September 11, 2008,¹ charged with the following:

1. Said Police Officer Anthony Beaton, assigned to the 10 Precinct, while off-duty, on or about September 4, 2006, at approximately 1945 hours, in Kings County, did wrongfully consume an intoxicant to the extent that said Officer was unfit for duty.

PG 203-04 Page 1, Paragraph 1 – FITNESS FOR DUTY-GENERAL
REGULATIONS

2. Said Police Officer Anthony Beaton, assigned to the 10 Precinct, while off-duty, on or about September 4, 2006, at approximately 1945 hours, in Kings County, did wrongfully consume an intoxicant to the extent that said Officer was unfit for duty, while armed.

PG 203-04, Page 1, Paragraph 1 – FITNESS FOR DUTY – GENERAL
REGULATIONS

The Department was represented by Mark Berger, Esq., Department Advocate's

¹ In a pretrial motion decision (attached to this decision as Appendix A), Deputy Commissioner Martin G. Karopkin ruled that these charges would be combined for trial with Disciplinary Case No. 82706/07, which involves charges brought against Police Officer Konata Hood, because both Respondent Beaton and Respondent Hood raised discrimination claims against Sergeant Patrick Logan, the Department's main witness in both cases, and because the charges against both Respondents involved interactions with Sergeant Logan which occurred on September 4, 2006. Although a joint trial was conducted, separate memoranda have been prepared because some of the witnesses who testified, and some of the documents offered into evidence, relate only to the charges against one of the two Respondents.

Office, and Respondent was represented by Michael V. Cibella, Esq.

The Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

The Respondent is found Not Guilty.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Sergeant Patrick Logan and Lieutenant Gary Neely as witnesses.

Sergeant Patrick Logan

Sergeant Logan testified that on September 4, 2006, he was assigned to supervise five police officers who were assigned to the West Indian Day Parade "Jump up party" detail.

Sergeant Logan testified that he was standing in front of a row of attached houses, at 105 Rockaway Parkway, when a black male in civilian clothes suddenly appeared in front him less than two feet away from him. The male, who had a strong odor of alcohol on his breath, suddenly handed him a Department ID card "face down," a "law enforcement shield of some type," and a fully loaded Smith & Wesson .9 millimeter automatic pistol. The male "simultaneously" mumbled some words but because his speech was "slurred," the only word that Sergeant Logan could make out clearly was

“responsibility.” Sergeant Logan testified that he was “shocked” because he had said nothing to the male and had not ordered the male to hand him anything. Sergeant Logan turned over the ID card, and looked down at the ID, shield and firearm in his hand. He examined them for five to ten seconds. The ID card had the rank and name “Police Officer Anthony Beaton” on it and he saw that the shield was a Department shield. When Sergeant Logan looked up, the male was no longer standing in front of him. He only saw the back of the male’s head and the back of his shirt as he walked away and disappeared into the crowd. Sergeant Logan had only briefly glimpsed the male’s face because he had immediately looked down at the ID, shield and firearm he was handed them.

Sergeant Logan testified that he looked into the crowd but, when he could not see the male, he decided not to pursue him into the crowd because he was still holding the firearm in his hand. He then put the firearm in his pocket. Sergeant Logan testified that it was not until he got back to the 67 Precinct that he “determined” that Police Officer Anthony Beaton was assigned to the 10 Precinct.

When Sergeant Logan was initially asked if he had looked at the male’s eyes he testified that he was “not sure” whether he had done so. After his recollection was refreshed by reading the fitness for duty report (DX 2) he prepared that night, he recalled that the male’s eyes appeared “glassy and watery” and that when the male was walking away from him his gait was “not straight” because he was “swaying” as he walked.

On cross-examination, Sergeant Logan acknowledged that on September 4, 2006, he had entered into his activity log that that he had observed the Respondent unfit for duty at “1945” hours. Sergeant Logan also acknowledged that on September 4, 2006, he was carrying, as he often did while on duty, a cell telephone that belonged to his wife.

Sergeant Logan was confronted with telephone records reflecting calls placed from his wife's cell telephone on September 4, 2006. These records show that at 1907 hours that day, a call was made from the cell phone to telephone number 212 741-8241, a number assigned to a telephone located inside the 10 Precinct. Sergeant Logan then acknowledged that he must have placed this call to the 10 Precinct and that because the records show that the call was made at 1907 hours, his activity log entry of 1945 hours, which he wrote two hours after he was at 105 Rockaway, was probably inaccurate.

Sergeant Logan testified that because he only caught a brief glimpse of the male's face and eyes, he was not certain at the time that the man was the police officer depicted on the ID card. When he was asked what investigative steps he had taken to determine whether the male who handed him the ID, shield and firearm had taken these items off of Police Officer Anthony Beaton, he responded that about ten minutes after the male handed him the items, while he was still at 105 Rockaway, he had "asked my guys if they heard anything, saw anything," but that "nobody heard or saw anything." When he was asked if he took any other investigative steps at the scene to locate the male or to locate Police Officer Anthony Beaton, he answered, "Sadly to say, no." When he was asked if, having just been handed a Department ID, a shield and a firearm, he was required to make any immediate notifications under the Patrol Guide, he answered that he made the required notification "a little while later."

Sergeant Logan, who testified on direct examination that as the male was walking away from him his gait was "not straight" because he was "swaying" as he walked, was confronted with a statement he made at his official Department interview. At this interview, Sergeant Logan, was asked, "How was his gait?" Sergeant Logan had

responded, "I really didn't pay attention to his gait." Sergeant Logan had no recollection of having said this at his official Department interview.

On redirect examination, Sergeant Logan acknowledged that he had made "mistakes" on September 4, 2006.

Lieutenant Gary Neely

Lieutenant Neely recalled that on September 4, 2006, he was on duty serving as commander of the 1st Platoon, 81 Precinct. At 2325 hours, the 81 Precinct front desk received a call requesting that a supervisor go to the Respondent's residence and, if he was there, to transport the Respondent from his home to the 67 Precinct. Lieutenant Neely personally drove to the Respondent's residence. Shortly after midnight, Lieutenant Neely arrived at the Respondent's residence and rang the doorbell. When the Respondent opened the door, he told Lieutenant Neely that he had been sleeping. Lieutenant Neely "concluded that at the time he was unfit" for duty because he noticed that the Respondent's shirt was wrinkled, his speech was slurred, his eyes were watery and bloodshot and "he seemed to be a little unsteady on his feet." Lieutenant Neely recalled that the Respondent's breath did not smell of alcohol. Lieutenant Neely prepared an unfit for duty report that night regarding the Respondent.

On cross-examination, Lieutenant Neely was confronted with the unfit for duty report he prepared on September 5, 2006, regarding the Respondent which reflects that Lieutenant Neely wrote that the Respondent's gait was steady. He admitted that the entry he made on this report would be more accurate than his present recollection. He also admitted that his description that the Respondent's shirt was wrinkled and that his eyes

were watery and bloodshot was consistent with the appearance of someone who has just woken up from sleeping. When Lieutenant Neely was asked whether the Respondent's slurred speech could have been the result of a speech impediment, Lieutenant Neely acknowledged that it could have been. He was not familiar with the Respondent's normal speech pattern because he had never met the Respondent previously.

The Respondent's Case

The Respondent called Sergeant Robert Ward as a witness and testified in his own behalf.

Sergeant Robert Ward

Sergeant Ward, a 15-year member who is presently assigned to Midtown South Precinct, testified that during September, 2006, he was assigned to the 67 Precinct's Conditions Unit and that on September 4, 2006, he responded to a noise complaint at 105 Rockaway Parkway. He recalled that three Department vans responded to this complaint and that he was in the "head van" and that Sergeant Logan was in the van behind him.

While he was standing outside 105 Rockaway Parkway, he saw a black male in civilian clothes approach Sergeant Logan. He observed that "they started to have a conversation." He looked over at them for "well less than a minute." He did not hear what was said and he did not see the male hand anything to Sergeant Logan. Sergeant Logan did not tell him that the male had handed him a Department ID, or a shield or a firearm. Sergeant Logan did not direct any of the police officers at the scene to locate the

male. After about 15 to 30 minutes, the vans left 105 Rockaway Parkway to respond to another noise complaint at Rutland Road and East 93rd Street.

On cross-examination, Sergeant Ward testified that while they were at Rutland Road and East 93rd Street, Sergeant Logan told him that he “got an officer’s gun, shield and ID.” Sergeant Logan did not say that he had ordered the officer to hand him these items. Sergeant Ward recalled that Sergeant Logan seemed “surprised.” They remained at Rutland Road and East 93rd Street handling the noise complaint for between 15 and 30 minutes. When they left, they returned to the 67 Precinct.

Sergeant Ward recalled that later that night he saw the Respondent when he appeared for his official Department interview and that he recognized him as the black male he had seen approach Sergeant Logan when they were at 105 Rockaway Parkway earlier that evening.

The Respondent

The Respondent, who has heavy eyelids that cover the top portion of his eyes and make him appear drowsy, testified that “I stutter a lot” and he spoke in a slurred, somewhat thick voice. The Respondent, who also walks with “a limp,” was assigned to the 10 Precinct in September, 2006. He testified that he was off duty on September 4, 2006, and that he and some friends attended block parties associated with the West Indian Day parade being held in backyards in the area of 105 Rockaway Parkway, Brooklyn. He testified that over the course of several hours he consumed two alcoholic drinks called “Shandys,” which consists of beer mixed with fruit juice, and that he ate one slice of rum cake, but that he was never intoxicated or unfit for duty.

At about 1830 hours, he was told that “a lot of” police officers were in front of 105 Rockaway Parkway. He came to the front and saw his cousin arguing with a uniformed police officer. He pulled his cousin away from the officer. He saw that two sergeants were supervising a number of police officers. One sergeant was Sergeant Ward and the other was Sergeant Logan. The Respondent approached Sergeant Logan and told him the he was “on the job.” He asked Sergeant Logan, “What is the matter? What is the problem?” Sergeant Logan told him that he wanted the party music turned down. The Respondent walked away from Sergeant Logan and went to tell his aunt to turn off the music. The Respondent then walked back to Sergeant Logan who then “asked me for my ID.” The Respondent handed Sergeant Logan his Department ID. Sergeant Logan asked him what precinct he worked in. The Respondent told Sergeant Logan that he was assigned to the 10 Precinct. Sergeant Logan asked him for the phone number at the 10 Precinct. The Respondent told Sergeant Logan that the phone number for the desk was 212 741 8241. He saw Sergeant Logan use his cell phone to call the 10 Precinct but because Sergeant Logan stepped away from him and moved behind a van, he could not hear what Sergeant Logan said during the telephone conversation.

After about three to five minutes, Sergeant Logan walked back over to him. Sergeant Logan told him he had learned that he was “supposed to working” at that time and he demanded to know what the Respondent was doing there when he was supposed to be on duty. The Respondent explained that he was off duty that day because he was on a “three day swing,” and that he was scheduled to begin vacation on September 7th. Sergeant Logan then ordered him to hand over his Department shield and his firearm. The Respondent testified that he asked Sergeant Logan, “For what reason?” Sergeant

Logan told the Respondent that he looked intoxicated and added that the Respondent could pick up his ID, shield and firearm "at the 67 Precinct when you are sober." The Respondent denied that he was intoxicated. Sergeant Logan had to "demand my gun and shield more than once" before the Respondent reluctantly handed over his shield and his firearm.

The Respondent used his aunt's cell phone to telephone the 10 Precinct. After his recollection was refreshed by referring to his aunt's cell phone bill, he testified that he made a call to the 10 Precinct at 1911 hours and a second call to the 10 Precinct one minute later. A police officer at the 10 Precinct told the Respondent, "You are in big trouble and will be suspended." The Respondent testified that he was "astonished" when he saw Sergeant Logan enter a van and drive off in possession of the Respondent's ID, shield and firearm. The Respondent remained at the location assuming that Sergeant Logan would return there. When he did not, the Respondent went home at 2100 hours with his two sons. At 2320 hours, two uniformed officers came to his home and gave him a note (RX C) that he should call the 10 Precinct. He called the 10 Precinct and was told to remain where he was and that he would be picked up there. Shortly after midnight, Lieutenant Neely arrived at the Respondent's residence and transported him to the 67 Precinct. When they arrived, he was advised to tell the commanding officer that he had been sleeping, even though he had not been sleeping.

On cross-examination, the Respondent confirmed that he had consumed two to three "Shandys" before he approached Sergeant Logan and was accused by him of being intoxicated. The Respondent also confirmed that he was told by the Counseling Unit that, because he had been found unfit for duty, he would be required to complete an in-patient

counseling program at an alcohol rehabilitation center. When he denied that he was an alcoholic and refused to attend in patient counseling, he was told that if he agreed to admit that he had been drinking on September 4, 2006, he would be permitted to remain home and attend an out-patient counseling program. He agreed to admit that he had been drinking in order to avoid having to attend the in-patient counseling program. He successfully completed an out-patient counseling program.

FINDINGS AND ANALYSIS

It is charged that while he was off-duty on September 4, 2006 at 1945 hours at 105 Rockaway Parkway, Brooklyn, the Respondent, having consumed an intoxicant, was unfit for duty while he was armed.

Initially, it must be noted that the Respondent's heavy eyelids and his normal slurred, thick-voiced speech pattern combine to create the deceptive appearance that he may be under the influence of alcohol. Also, although the Respondent acknowledged that he consumed two or three drinks on September 4, 2006, he adamantly denied that he was intoxicated and unfit for duty when he was standing face-to-face in front of Sergeant Logan at 105 Rockaway Parkway, Brooklyn.

The only evidence offered by the Department to prove that the Respondent was unfit for duty on September 4, 2006, at 1945 hours at 105 Rockaway Parkway, was the testimony of Sergeant Logan. Sergeant Logan asserted that the Respondent, on his own volition, handed him his Department ID, his shield and his firearm, as he mumbled some unintelligible words indicating that he did not want to be responsible for possessing these

items. According to Sergeant Logan, the Respondent then walked away and disappeared into a large crowd, without identifying himself or stating where he was assigned.

The Respondent testified that Sergeant Logan accused him of drinking and then ordered him, more than once, to hand over his ID, shield and firearm. The Respondent further testified that he told Sergeant Logan that he was assigned to the 10 Precinct, that he provided him with a telephone number so that he could call the 10 Precinct, that he saw him make a call using a cell phone, and that Sergeant Logan then entered a van, drove away and left him at 105 Rockaway Parkway.

The reliability of Sergeant Logan's version of his encounter with the Respondent must be examined in light of credible evidence in the record which impeaches his trial testimony about when and how he found out what command the Respondent was assigned to and which also shows that he made an inaccurate entry in his activity log regarding his encounter with the Respondent. The record further shows that he offered trial testimony which was inconsistent with a statement he made at his official Department interview.

Initially, it must be noted that it would constitute an extremely unusual occurrence for an off-duty police officer to walk up to a uniformed sergeant standing in the street and hand him his Department ID, his shield and his firearm where the sergeant has not ordered the off-duty officer to hand over these items. Testimony that a highly unusual event took place is inherently suspect and must be closely scrutinized, especially where, as here, there is an absence of any evidence that supports Sergeant Logan's version of this event.

Sergeant Logan testified that when the Respondent was standing in front of him at 105 Rockaway Parkway, he said nothing all to the Respondent and that when he took possession of the Respondent's ID, shield and firearm, the Respondent did not tell him what command he was assigned to. Sergeant Logan further testified that he did not learn where the Respondent was assigned until after he had returned to the 67 Precinct, where he determined on his own that the Respondent was assigned to the 10 Precinct. Finally, Sergeant Logan entered in his activity log entry that his encounter with the Respondent at 105 Rockaway Parkway took place at 1945 hours.

Sergeant Logan's assertion that he encountered the Respondent at 105 Rockaway Parkway at 1945 hours must be inaccurate because the record of outgoing calls made on the cell phone he was using on September 4, 2006, show that at 1907 hours he placed a cell call to the 10 Precinct, the Respondent's assigned command. Also, the fact Sergeant Logan placed a call on his cell telephone to the Respondent's command at 1907 hours serves to impeach Sergeant Logan's testimony that the Respondent did not tell him where he was assigned and that he himself determined where the Respondent was assigned only after he returned to the 67 Precinct.

Moreover, the fact that a call was made from Sergeant Logan's cell phone to the 10 Precinct corroborates the Respondent's testimony that he told Sergeant Logan that he was assigned to the 10 Precinct, that he provided Sergeant Logan with a telephone number at the 10 Precinct, and that he saw Sergeant Logan using a cell phone to make a call.

In addition, Sergeant Logan's claim that he said absolutely nothing to the Respondent at 105 Rockaway Parkway is not corroborated by Sergeant Ward, who was

not shown to have any reason to want to hurt Sergeant Logan. Sergeant Ward testified that it appeared to him that Sergeant Logan and the Respondent were starting to engage in a conversation.

Sergeant Logan also testified that the man who handed him the ID, shield and firearm, had appeared suddenly and unexpectedly and that he quickly turned around and walked away into a crowd. Sergeant Logan asserted that because he had only briefly glimpsed the man's face, he could not be certain that the man who handed him these items was the police officer depicted on the photo ID card. However, Sergeant Logan's claim that he was not certain that the man was the police officer depicted on the ID card is inconsistent with Sergeant Logan's subsequent actions. Sergeant Logan's explanation that because he was holding a gun in his hand, he did not pursue the male who had handed it to him, makes no sense. Moreover, Sergeant Ward testified that Sergeant Logan never directed any of the police officers at the scene to look for the man or to look through the crowd for Police Officer Beaton, whose photo was depicted on his ID card.

With regard to the question of what reason Sergeant Logan would have to invent a story that the Respondent had voluntarily handed him his firearm and then walked away and disappeared into a crowd, the answer can be found in the Patrol Guide. If Sergeant Logan believed that the Respondent was unfit for duty due to intoxication, Sergeant Logan was required to comply with the provisions of Patrol Guide Procedure 206-12. Under this procedure, a supervisor who has observed a member at a particular location who appears to be unfit for duty due to intoxication must notify the precinct commander or the duty captain to respond to that location, and the supervisor must remain at the location pending the arrival of the commander or the duty captain, since the commander

or the duty captain has the responsibility to conduct an investigation to determine whether the member is intoxicated and to remove the member's firearm if it is determined that the member is intoxicated.

Sergeant Logan acknowledged that he did not immediately make the notification required by this procedure but he implied that this was only a minor oversight because he made a notification "a little while later." Sergeant Ward's testimony establishes that Sergeant Logan completely ignored this procedure. Sergeant Logan not only did not request that the duty captain respond to 105 Rockaway Parkway, Sergeant Logan did not remain at that location. Rather, he left the location in possession of the Respondent's firearm. Moreover, he did not go directly to the 67 Precinct to obtain and prepare a Supervisor's Fitness for Duty Report (PD 469-150) as he was required to do. Instead, he left 105 Rockaway Parkway to respond to a non-emergency call (a noise complaint at Rutland Road and East 93rd Street), where he casually mentioned to Sergeant Ward that he was in possession of "an officer's gun." No Patrol Guide procedure authorizes a sergeant who has removed a member's firearm to then leave the scene and drive away to respond to a non-emergency call.

Finally, Sergeant Logan, who testified on direct examination that as the male was walking away from him his gait was "not straight" because he was "swaying" as he walked, was confronted with a statement he made at his official Department interview. At this interview, Sergeant Logan, was asked, "How was his gait?" Sergeant Logan had responded, "I really didn't pay attention to his gait."

Based on the above, I cannot credit Sergeant Logan's testimony that the Respondent was unfit for duty on September 4, 2006, at 1945 hours at 105 Rockaway Parkway.

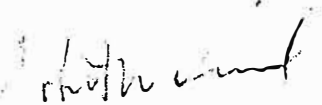
Since the subject charges specifically allege that the Respondent was unfit for duty due to intoxication at 1945 hours at 105 Rockaway Parkway, Lieutenant Neely's testimony regarding his observation of the Respondent at his residence after midnight would be relevant to the question of whether the Respondent was unfit for duty at 1945 hours only if Lieutenant Neely had unequivocally testified that the Respondent clearly appeared to be intoxicated. However, Lieutenant Neely did not so testify. On the contrary, he recalled that the Respondent's breath did not smell of alcohol, he admitted that the fitness for duty report he prepared reflects that the Respondent's gait was steady, and he admitted that the Respondent's slurred speech could have been the result of a speech impediment and that he was not familiar with the Respondent's normal speech which, as noted above, is a slurred, thick-voiced speech pattern.

In conclusion, the testimony offered by the Department did not meet the Department's burden of presenting credible evidence which proves these charges by a preponderance of the evidence.

The Respondent is found Not Guilty.

Respectfully submitted,

APPROVED
MAR 10 2010
RAYMOND W. KELLY
POLICE COMMISSIONER


Robert W. Vinal
Assistant Deputy Commissioner - Trials